

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

007-10-1003

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-155
Table of Allotments,)	RM-9082
FM Broadcast Stations)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,)	
and Woodward, Oklahoma))	

To: Chief, Allocations Branch

**COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING
AND ORDERS TO SHOW CAUSE**

FM 92 Broadcasters, Inc. ("FM 92"), by its undersigned attorneys and in response to the Commission's Notice of Proposed Rule Making and Orders to Show Cause in the above-captioned proceeding, DA 98-1682 (released August 28, 1998) ("NPRM"), hereby files these Comments in support of the NPRM's proposal to allot Channel 283C1 to Mooreland, Oklahoma, to substitute Channel 228A for Channel 261C1 at Woodward, Oklahoma, to substitute Channel 260C1 for Channel 259C1 at Alva, Oklahoma, and to reallocate Channel 259C3 from Tishomingo, Oklahoma to Tuttle, Oklahoma.

1. This proceeding began with a filing by FM 92, on March 21, 1996, of a Petition for Rule Making and Request for Order to Show Cause ("Petition") petitioning the Commission to initiate a proceeding to amend the FM Table of Allotments to (a) substitute Channel 228A for Channel 261C1 at Woodward, Oklahoma; and (b) allot Channel 261C1 to Mooreland, Oklahoma. FM 92 demonstrated in its Petition that this channel substitution at Woodward and allotment at Mooreland would comply with all Commission technical requirements, would not

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deprive Woodward of any service, would result in the provision of a first local aural service to Mooreland, a community warranting such service, and would result in a preferential arrangement of allotments. In addition, FM 92 requested that the Commission issue an Order to Show Cause why the license of Classic Communications, Inc. ("Classic") for station KWFX(FM), Woodward, Oklahoma, should not be modified to specify operation on Channel 228A.¹ In support of this request, FM 92 demonstrated that Channel 261C1 at Woodward was a reserved upgrade channel that had lain fallow for nearly six years, during which time Classic and its predecessor licensee had continued to operate KWFX on Channel 228A and had made no attempt to implement the upgrade. FM 92 hereby incorporates its Petition as well as its July 9, 1996 Supplement to the Petition by reference.

2. On March 21, 1997, Ralph Tyler, permittee of KTSH(FM), Tishomingo, Oklahoma, filed a conflicting Petition for Rule Making and Request for Issuance of Order to Show Cause in which he asked the Commission to amend the FM Table of Allotments to reallocate Channel 259C3 from Tishomingo, Oklahoma, to Tuttle, Oklahoma, and modify KTSH's license accordingly. In order to accommodate this change, Tyler also requested that the Commission (a) substitute Channel 292C1 for Channel 261C1 at Woodward, Oklahoma, and modify the license of KWFX to specify operation on Channel 292C1; and (b) substitute Channel 260C1 for Channel 259C1 at Alva, Oklahoma, and modify the license of KXLS(FM), licensed to Chisholm Trail Broadcasting Co., Inc. ("Chisholm Trail") to specify Channel 260C1. FM 92's proposed allotment of Channel 261C1 to Mooreland, however, would have prevented the allotment of Channel 260C1 to Alva. Accordingly, so that both his proposal and that of FM 92 could be

¹At that time, the licensee of the station was Fuchs Communications, Inc.

accommodated, Tyler filed a Supplement to his Petition for Rule Making requesting that Channel 283C1 be allotted to Mooreland. In all other respects, his proposal remained unchanged.

3. In response to these proposals and in order to accommodate both FM 92 and Tyler, the Commission proposed two options in its NPRM. The first option consisted of Tyler's suggested changes to the FM Table of Allotments ("Option 1"). The second option consisted of these same changes with the exception that Channel 228A, rather than Channel 292C1, would be substituted for Channel 261C1 at Woodward ("Option 2"). With respect to the proposed allotment of Channel 283C1 to Mooreland, the Commission noted that the allotment could be implemented with a site restriction of 9.3 kilometers south (5.8 miles) to avoid a short-spacing to Station KTCM. The Commission asked for comments on the two versions of its proposal.

4. FM 92 supports the Commission's Option 2 proposal with a minor change in the Mooreland site restriction. Specifically, as demonstrated in the attached Engineering Statement prepared by FM 92's consulting engineer, a tower suitable for the Channel 283C1 facilities exists near Sharon, Oklahoma. See Exhibit A. Use of this site, however, would require a site restriction of 29 kilometers southwest. Id. Accordingly, FM 92 hereby requests allotment of Channel 283C1 to Mooreland with this site restriction.² Moreover, FM 92 notes that the Option 2 proposal will permit Channel 228 to be allotted to Woodward as a Class A, Class C3 or Class C2 operation at KWFY's existing transmitter site. See Exhibit A. Should KWFY propose operation as a Class C1 facility, it may do so with a minor site restriction of 5.0 kilometers west northwest. Id.

²In the event that the Commission adopts the Option 1 proposal, FM 92 requests that the allotment Mooreland also include this site restriction.

5. In its NPRM, the Commission also requested that FM 92 provide a statement that it will reimburse both Classic and Chisholm Trail for their reasonable and prudent expenses related to their channel changes. In its Petition, FM 92 pledged to reimburse Fuchs Communications, Inc., Classic's predecessor in interest, for its reasonable and prudent expenses in "relocating" from Channel 261C1 to Channel 228A. See Petition at 4 n.3. However, as FM 92 pointed out, KWFX has never commenced operation on the upgraded channel; therefore, there should be no expenses. If the Option 1 proposal is adopted, FM 92 pledges to reimburse Classic for its reasonable and prudent relocation expenses. (Of course, FM 92 believes that such expenses should be shared with Tyler, who will also benefit from this move.) Finally, FM 92 does not believe that it should be required to reimburse Chisholm Trail. Pursuant to Commission policy, whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, the benefitting party must reimburse the affected station for its costs. Cordele, Dawson & Montezuma, Georgia, 8 FCC Rcd 7672 (1993). The substitution of Channel 260C1 for Channel 259C1 at Alva, Oklahoma, is necessitated by Tyler's request for reallocation of Channel 259C3 from Tishomingo to Tuttle, Oklahoma, and will not benefit FM 92 in any way. Accordingly, the full cost of Chisholm Trail's move should be born by Tyler. Nevertheless, should the Commission adopt either Option 1 or Option 2, FM 92 pledges to reimburse Classic and Chisholm Trail for their reasonable and prudent expenses related to their channel changes to whatever extent the Commission requires, assuming that Classic incurs any expenses by relocating pursuant to Option 1.

6. FM 92 hereby reiterates its expression of interest in the allotment of a first local aural service to Mooreland, Oklahoma, with the site restriction indicated herein. If either of the

proposals set forth in this proceeding is adopted to allot Channel 283C1 to Mooreland, Oklahoma, FM 92 will proceed to file the appropriate application to implement the facility when the Commission opens a window and if authorized, will proceed promptly with the construction and operation of the new station.

For the foregoing reasons, FM 92 Broadcasters, Inc. urges the Commission to adopt the NPRM's Option 2 proposal.

Respectfully submitted,

FM 92 BROADCASTERS, INC.

By: Veronica D. McLaughlin
Kathryn R. Schmeltzer
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Its Attorneys

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Dated: October 19, 1998

EXHIBIT A

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BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS
P.O. Box 356 McKinney, Texas 75070
MEMBER AFCCE
(972) 542-2056

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ENGINEERING STATEMENT IN SUPPORT OF COMMENTS OF
FM 92 BROADCASTERS, INC.
MM DOCKET 98-155, RM-9082, RM-9133
ALVA, MOORELAND, TISHOMINGO, TUTTLE & WOODLAND, OKLAHOMA

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OCTOBER, 1998

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FM 92 BROADCASTERS, INC.
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ALVA, MOORELAND, TISHOMINGO, TUTTLE & WOODWARD, OKLAHOMA
OCTOBER, 1998

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This Firm has been retained by FM 92 Broadcasters, Inc. ("FM92") to prepare this Engineering Statement in support of its comments in the matter of MM Docket 98-155 and Rulemaking Petitions RM-9082 and RM-9133.

FM 92 filed a Petition for Rulemaking to allot Channel 261C-1 to Mooreland, Oklahoma, to substitute Channel 228A at Woodward, Oklahoma and to modify the license of Station KWFX to specify operation Channel 228A. Since that time another rulemaking proposal has been filed by Ralph Tyler which, in part, conflicts with the FM 92 proposal.

Station KWFX was originally assigned to Channel 228A and remains on Channel 228 operating with Class A facilities to the present time. At one time Station KWFX had a construction permit for Class C1 facilities on Channel 261C1. A previous owner surrendered the construction permit and requested that it be cancelled. The request for cancellation was granted and Station KWFX continued to operate on Channel 228A.

The instant Notice of Proposed Rulemaking lists two options to resolve the conflicts between the two proposals. FM 92 supports Option 2 with a minor change in the site restriction.

FM 92 proposes a minor change in the site restriction for Channel 283C1 at Mooreland, Oklahoma. A 1200 foot tower suitable for full Class C1 facilities exists near Sharon, Oklahoma. This tower is 29 kilometers southwest of Mooreland. The proposed coordinates for Channel 283C1 are:

N.L.: 36° 16' 06"

W.L.: 99° 26' 56"

An FM Spacing Study appears herein as Exhibit E1-1 showing the spacing considerations from the proposed allotment site.

The allotment for Station KWFX, Channel 228, may be allotted for Class A, C3 or C2 operation from the existing site of Station KWFX. An FM Spacing Study appears herein as Exhibit E1-2 showing the spacing considerations for Class C2 operation from the present KWFX site.

Should Station KWFX request a Class C1 facility, the existing channel 228 may be allotted as a Class C1 channel with a minor site restriction 5.0 kilometers west northwest of the existing KWFX

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site. The coordinates for this site restriction are:

N.L.: 36° 28' 03"

W.L." 99° 25' 50"

An FM Spacing Study appears herein as Exhibit E1-3 showing the spacing considerations from the proposed allotment site.

It is noted that the channel on which FM 92 operates its Station KMZE has been inadvertently omitted from the present and proposed allotment table. This is Channel 221C3. A corrected table of assignments for Option 2 appears below:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
	<u>Option 2</u>	
Alva, Okla	259C1, 278C1, 289C2	260C1, 278C1, 289C2
Mooreland, Okla	-	283C1
Tishomingo, Okla	259C3	-
Tuttle, Okla	-	259C3
Woodward, Okla	221C3*, 240A, 261C1 266C, 272A	221C3*, 228A#, 266C 240A, 272A

- * 221C3, Assigned to KMZE was inadvertently omitted from the NPRM listing for Woodward, Oklahoma
 - # May be assigned to Woodward, Oklahoma as Class A, C3 or C2 at existing KWFX Site. May be assigned to Woodward, Oklahoma as Class C1 with site restriction
- Adoption of this proposal should provide facilities satisfactory to all parties.

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EXHIBIT E1-1
FM-92 BROADCASTERS, INC.
PROPOSED MOORELAND, OKLAHOMA ALLOTMENT

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FM Study for: NEW283	FCC Database Date: 10/98	36-16-06
Location: MOORELAND, OK	Channel Class: C1	99-26-56
Call City, State	Chan Class Freq kW Latitude Dist.	Required
Status Proponent	File Number HAAT Longitude Azm.	Clear (km)

>>>>>>> Study For Channel 283 104.5 MHz <<<<<<<<

KWFX	MOORELAND, OK	283 C1 104.5	36-21-24	22.2	245	
ADD	RALPH TYLER	Docket-98-155	0	99-13-37	63.7	-222.8 SHORT
		Use of 73.215 for short spacing requires:	224			-201.8 SHORT

Site Restriction 9.3km South-Alternate Channel

KLLS	AUGUSTA, KS	283 C2 104.5 45.0+	37-48-15	258.4	224	73.215
LIC	WICHITA GREAT EMPIRE	BLH-941230KA 157	97-15-56	48.1	+34.4	CLEAR

ALLOC	BURKBURNETT, TX	284 C 104.7	34-05-35	246.8	209	
USE		-	0	98-52-44	167.7	+37.8 CLEAR

Coordinates updated from LIC record BLH881118KA

KYYI	BURKBURNETT, TX	284 C 104.7 100.	34-05-35	246.8	209	
LIC	SAM F. & PAMELA S. BE	BLH-881118KA 310	98-52-44	167.7	+37.8	CLEAR

*To channel 284C1

KQFX	BORGER, TX	282 C1 104.3 100.	35-25-34	216.7	177	
LIC	GALBREATH BROADCASTIN	BLH-920521KA 175	101-36-47	245.1	+39.7	CLEAR

PROPOSED SITE RESTRICTION:
Site Restricted 29 km southwest
REF Coordinates: N.L.: 32° 16' 06"
W.L.: 99° 26' 56"

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EXHIBIT E1-2
 FM-92 BROADCASTERS, INC.
 PROPOSED KWFX ALLOTMENT
 CLASS A, C3, OR C2

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FM Study for: KWFX                      FCC Database Date: 10/98      36-25-42
Location: WOODWARD, OK                  Channel Class: C2          99-24-10
Call City, State                        Chan Class Freq kW Latitude Dist. Required
Status Proponent                        File Number HAAT Longitude Azm. Clear (km)
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>>>>>>> Study For Channel 228  93.5 mHz <<<<<<<<

KWFX  WOODWARD, OK                      228 A  93.5 3.00 36-25-42 0.0 166
LIC  CLASSIC COMMUNICATION              BLH-6414  46 99-24-10 0.0 -166.0 SHORT
*To channel 261C1 per D90-286

KWFX  WOODWARD, OK                      228 A  93.5      36-25-42 0.0 166
ADD  FM 92 BROADCASTERS                 Docket-98-155  0 99-24-10 0.0 -166.0 SHORT
Option 2

ALLOC CORDELL, OK                      229 A  93.7      35-17-24 131.7 106
VAC  Docket-84-231  0 98-59-24 163.4 +25.7 CLEAR
First Come/First Served Allotment
# 63

KRKZ  ALTUS, OK                        228 C2 93.5 45. 34-26-20 220.9 190
LIC  ALTUS RADIO, INC.                 BLH-890227KG 161 99-30-08 182.4 +30.9 CLEAR

ALLOC ALTUS, OK                        228 C2 93.5      34-25-12 222.8 190
USE  Docket-87-200  0 99-26-32 180.9 +32.8 CLEAR
Site Restricted-Effective 1-11-88-Reserved for KRKZ per D87-200

KWME  WELLINGTON, KS                  228 A  93.5 3.00 37-14-28 200.0 166
LIC  JOHNSON ENTERPRISES,              BLH-790709AG 50 97-24-04 62.6 +34.0 CLEAR

KWME  WELLINGTON, KS                  228 A  93.5 6.0 37-14-28 200.0 166
CP   JOHNSON ENTERPRISES,              BPH-960826IL 98 97-24-04 62.6 +34.0 CLEAR

ALLOC WELLINGTON, KS                  228 A  93.5      37-14-28 200.0 166
USE  - 0 97-24-04 62.6 +34.0 CLEAR
Coordinates updated from LIC record  BLH790709AG
  
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EXHIBIT E1-3 FM-92 BROADCASTERS, INC. PROPOSED KWFX ALLOTMENT CLASS C1

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FM Study for: KWFX	FCC Database Date: 10/98	36-28-03
Location: WOODWARD, OK	Channel Class: C1	99-25-50
Call City, State	Chan Class Freq kW Latitude Dist.	Required
Status Proponent	File Number HAAT Longitude Azm.	Clear (km)

>>>>>> Study For Channel 228 93.5 MHz <<<<<<<<

KWFX WOODWARD, OK 228 A 93.5 3.00 36-25-42 5.0 200
LIC CLASSIC COMMUNICATION BLH-6414 46 99-24-10 150.2 -195.0 SHORT
Use of 73.215 for short spacing requires: 178 -173.0 SHORT
*To channel 261C1 per D90-286

KWFX WOODWARD, OK 228 A 93.5 36-25-42 5.0 200
ADD FM 92 BROADCASTERS Docket-98-155 0 99-24-10 150.2 -195.0 SHORT
Use of 73.215 for short spacing requires: 178 -173.0 SHORT

Option 2

KWME WELLINGTON, KS 228 A 93.5 3.00 37-14-28 200.32 200
LIC JOHNSON ENTERPRISES, BLH-790709AG 50 97-24-04 64.0 +0.32 CLOSE

KWME WELLINGTON, KS 228 A 93.5 6.0 37-14-28 200.32 200
CP JOHNSON ENTERPRISES, BPH-960826IL 98 97-24-04 64.0 +0.32 CLOSE

ALLOC WELLINGTON, KS 228 A 93.5 37-14-28 200.32 200
USE - 0 97-24-04 64.0 +0.32 CLOSE
Coordinates updated from LIC record BLH790709AG

KRKZ ALTUS, OK 228 C2 93.5 45. 34-26-20 225.16 224
LIC ALTUS RADIO, INC. BLH-890227KG 161 99-30-08 181.7 +1.16 CLOSE

ALLOC ALTUS, OK 228 C2 93.5 34-25-12 227.2 224
USE Docket-87-200 0 99-26-32 180.3 +3.2 CLOSE
Site Restricted-Effective 1-11-88-Reserved for KRKZ per D87-200

ALLOC CORDELL, OK 229 A 93.7 35-17-24 136.6 133
VAC Docket-84-231 0 98-59-24 162.9 +3.6 CLOSE
First Come/First Served Allotment
63

ALLOC WATONGA, OK 230 A 93.9 35-54-17 112.8 75
USE Docket-95-175 0 98-23-09 123.3 +37.8 CLEAR
Effective 1-17-97-Reserved for KIMY per D95-175

KIMY WATONGA, OK 230 A 93.9 3.00 35-54-17 112.8 75
LIC VERA L. DUNN BMLH-980311KD 100 98-23-09 123.3 +37.8 CLEAR

SITE RESTRICTED 5.0 KM WNW
Proposed Site: N.L.: 36° 28' 03"
W.L.: 99° 25' 50"

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CERTIFICATION OF ENGINEER

I hereby state that:

I am President of Sellmeyer Engineering

The Firm of Sellmeyer Engineering has been retained by FM 92 Broadcasters, Inc. to prepare this Engineering Exhibit

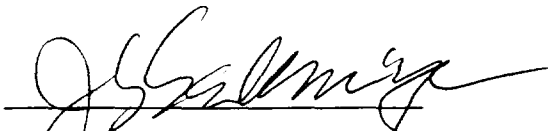
I am a graduate of Arizona State University with the degree of Bachelor of Science in Engineering

I am a Registered Professional Engineer in the States of Ohio and Texas

My qualifications as an Engineer are a matter of record with the Federal Communications Commission, having been previously accepted in applications of this type

This Engineering Exhibit was prepared by me personally or under my direct supervision, and

All facts stated herein are true and correct to the best of my knowledge and belief.



J. S. Sellmeyer, P. E.

October 16, 1998

P. O. Box 356
McKinney, Texas 75070
972-542-2056



CERTIFICATE OF SERVICE

I, Sandy Tucker, hereby certify that I have on this 19th day of October 1998 caused a copy of the foregoing "Comments in Support of Notice of Proposed Rule Making and Orders to Show Cause" to be served by first class U.S. mail, postage prepaid, upon the following:

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Sandy Tucker

*Hand Delivery